UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GEOMETRICA, INC., **Plaintiff,** **v.** **FREEDOMES USA,** **Defendant.**	**CIVIL ACTION NO. ___________________**

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Geometrica, Inc. (hereinafter, "Geometrica" or "Plaintiff"), by and through its counsel, Baker & McKenzie LLP, and for its Complaint against Defendant Freedomes USA (hereinafter, "Freedomes" or "Defendant") hereby alleges as follows:

NATURE OF ACTION

1. This is an action for trademark infringement in violation of Section 32(a) of the Lanham Act, false designation of origin in violation of Section 43(a) of the Lanham Act, cyberpiracy in violation of Section 43(d) of the Lanham Act, trademark infringement in violation of the common law of Texas, unfair competition in violation of the common law of Texas, and trademark dilution under the Texas Business and Commerce Code, all arising out of Defendant's unauthorized use of Geometrica's registered trademark FREEDOME. By this action, Geometrica seeks injunctive and monetary relief from Defendant, as set forth herein.

JURISDICTION AND VENUE

2. This Court has both federal and diversity jurisdiction over the claims in this action.

3. Defendant has and continues to infringe Geometrica's registered trademark in violation of numerous Lanham Act provisions and unfair competition laws, as alleged herein and

incorporated by reference to support Plaintiff's jurisdictional allegations. As a result, the Court has original federal-question jurisdiction over this action pursuant to 15 U.S.C. §§ 1114 and 1125, as well as 28 U.S.C. § 1338(b).

4. This Court further has supplemental jurisdiction over the state and common law claims pursuant to 28 U.S.C. § 1367(a).

5. This Court also has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) as the parties to this dispute are citizens of different states, and the amount in controversy exceeds the sum or value of $75,000, exclusive of interest and costs.

6. This Court has personal jurisdiction over Defendant. Upon information and belief, Defendant regularly conducts business activity and/or at all relevant times conducted business activity in this state and district, which includes the improper use of Plaintiff's trademark that is the subject of this action. By way of example only, Defendant provided confusingly similar geodesic domes for the NCAA Final Four Fan Fest held in this district in April 2016, under the infringing name Freedomes.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendant resides in this district, conducted and conducts business in this district, and because a substantial part of the events or omissions giving rise to the claims in this action occurred in this district.

PARTIES

8. Plaintiff Geometrica, Inc. is a corporation organized and existing under the laws of the State of Texas, with a principal place of business in Cypress, Texas.

9. Upon information and belief, Defendant Freedomes USA conducts business throughout the United States, with a principal place of business in Lancaster, California.

FACTUAL BACKGROUND

Geometrica's FREEDOME Trademark Registration

10. Geometrica has been designing, manufacturing, and installing domes and space frame structures for, among others, architectural, commercial, and industrial uses since at least 1992. Since that time, Geometrica has grown to become one of the largest and most successful manufacturers of geodesic domes in the United States.

11. Over the past twenty-five (25) years, Geometrica has delivered domes and space frames in over thirty (30) countries. Today, Geometrica has facilities in Houston, Texas, and Monterrey, Mexico and markets its FREEDOME domes for architectural, commercial, and industrial use, among others, in the United States, North and South America, Europe, Asia, and Africa.

12. Since at least as early as 1995, Geometrica has used the trademark FREEDOME (U.S. Registration No. 2,014,501) (hereinafter, "FREEDOME" or the "Mark") in commerce within the United States in connection with prefabricated metal and non-metal building structures and skylights. A true and correct copy of the Certificate of Registration is attached hereto as **EXHIBIT 1**.

13. The registration is active, valid, incontestable, and in full force and effect. The registration is *prima facie* evidence of the validity of the registration, of Geometrica's ownership of the Mark, and of Geometrica's exclusive right to use the Mark in commerce in connection with prefabricated metal and non-metal building structures and skylights, as provided in 15 U.S.C. § 1057(b) and § 1115(a). Furthermore, the registration is constructive notice of Geometrica's claim of ownership of the Mark pursuant to 15 U.S.C. § 1072.

14. Geometrica has continuously and exclusively used the Mark in commerce within the United States in connection with building structures and skylights since as early as December 1, 1995.

15. Geometrica's website prominently features the Mark in describing Geometrica's geodesic domes and the revolutionary technology used. Unlike traditional geodesic domes, Geometrica uses unique technology, which allows Geometrica to build stunning long-span structures for architectural and industrial buildings. Geometrica's domes provide all the advantages of circular domes, but with a non-circular plan. Using the inherent strength of doubly curved surfaces, Geometrica's domes may clear spans up to 1000 ft and often are shaped to be the lightest structure to cover a specific free-form area. An example of a Geometrica geodesic dome is shown below.

16. Geometrica has expended substantial time, money, and other resources in developing, advertising, and otherwise promoting the Mark and its unique geodesic domes. As a

result, geodesic domes, that are used in connection with the Mark are widely recognized as being high quality structures and are exclusively associated by consumers with Geometrica.

Defendant's Acts of Infringement and Unfair Competition

17. Upon information and belief, Defendant is engaged in manufacturing event domes and permanent structures based on the geodesic dome idea.

18. Upon information and belief, without authorization or permission from Geometrica, the Defendant began using the name "Freedomes" in connection with closely related building structures, over a decade after Geometrica was founded and began using the Mark in commerce. Attached hereto as **EXHIBIT 2** is a screenshot of Defendant's "About Freedomes" section of its website, and the following picture provides an example of the geodesic domes offered by the Defendant:

freedomes
freedomes
WORLD IN A SPHERE

19. Further and also without authorization or permission, Defendant registered the freedomes.com domain name on February 14, 2009, long after Geometrica began using the Mark in commerce.

20. The WHOIS database shows that the freedomes.com domain name is registered to Adam Lyczakowski and was recently renewed on February 13, 2017. Attached hereto as **EXHIBIT 3** is a screenshot of the WHOIS database showing registration details of the freedomes.com domain name. Attached hereto as **EXHIBIT 4** are screenshots of Defendant's website showing use of the Mark in connection with domes.

21. Before filing this action, Geometrica sent multiple cease and desist letters to Defendant and/or its parent. In those letters, Geometrica made Defendant expressly aware that its use of "Freedomes" in any manner in connection with the marketing, advertising, sale, and/or lease of its geodesic domes was unlawful in numerous respects, including infringing Geometrica's Mark. Despite those attempts to resolve this matter without court intervention, Defendant has refused to take any corrective action or meaningfully respond to Geometrica's correspondence.

22. Because the products at issue are both geodesic domes sold in the same market, and because Freedomes is marketing and advertising its products under a name that is virtually identical to the protected Mark, upon information and belief, Freedomes has created confusion among existing and potential consumers to Geometrica's detriment.

23. Defendant's unlawful conduct has and will continue to cause damage to, among other things, Geometrica's business, reputation, goodwill, and dilution of the Mark. Unless Defendant is enjoined, Geometrica will continue to suffer irreparable injury to which there is no adequate remedy at law.

COUNT I

TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT, 15 U.S.C. § 1114

24. Geometrica re-alleges and incorporates herein the allegations set forth above as if fully set forth herein.

25. Geometrica is the owner of the Mark. The registration is active, valid, incontestable, and in full force and effect.

26. Defendant, without authorization from Geometrica, has used and is continuing to use the Mark.

27. Defendant's unauthorized use of the Mark has and is likely to cause confusion, mistake, or deception among consumers or potential consumers as to the origin, sponsorship, or approval of Defendant's domes and other building structures.

28. Defendant had constructive knowledge of Geometrica's registered and exclusive rights in the Mark prior to Defendant's use of the Mark, as well as actual knowledge that upon receipt of the cease and desist letters, Defendant was to cease use of the Mark immediately.

29. The aforesaid acts of Defendant constitute trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

30. Defendant's acts were committed wilfully, with full knowledge of Geometrica's rights, and with the intention of deceiving and misleading the public and causing harm to Geometrica. The knowing and intentional nature of the acts set forth herein renders this an exceptional case under 15 U.S.C. § 1117(a).

31. As a direct and proximate cause of Defendant's unlawful, intentional and willful conduct, Geometrica has been and will continue to be irreparably harmed unless Defendant is temporarily, preliminarily, and/or permanently enjoined from such unlawful conduct.

Geometrica has no adequate remedy at law. Unless enjoined, Defendant will continue their unlawful, intentional, and wilful conduct.

32. In light of the foregoing, Geometrica is entitled to a temporary, preliminary, and/or permanent injunction prohibiting Defendant from using the Mark, or any mark confusingly similar thereto, and to recover from Defendant all damages that Geometrica has sustained and will sustain, and all gains, profits and advantages obtained by Defendant as a result of its infringing acts alleged above in an amount not yet known but in excess of $75,000, and the costs of this action pursuant to 15 U.S.C. § 1117(a) or, at Geometrica's option, statutory damages pursuant to 15 U.S.C. § 1117(c).

33. As this is an exceptional case given Defendant's wilful acts, pursuant to 15 U.S.C. § 1117(a), Geometrica is further entitled to three (3) times the amount of the above profits or damages, whichever is greater, and its reasonable and necessary attorneys' fees.

COUNT II

CYBERPIRACY UNDER THE LANHAM ACT, 15 U.S.C. § 1125(D)

34. Geometrica re-alleges and incorporates herein the allegations set forth above as if fully set forth herein.

35. Geometrica is the owner of the Mark. The registration is active, valid, incontestable, and in full force and effect.

36. Defendant, without authorization from Geometrica, has used and registered domain name, freedomes.com, which is confusingly similar to the Mark, and upon information and belief, has done so with the bad faith intent to profit unlawfully from the Mark.

37. Defendant had constructive knowledge of Geometrica's registered and exclusive rights in the Mark prior to Defendant's use of the Mark, as well as actual knowledge that upon receipt of the cease and desist letters, Defendant was to cease use of the Mark immediately.

38. The aforesaid acts of Defendant constitute cyberpiracy in violation of Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d).

39. Defendant's acts were committed wilfully, with full knowledge of Geometrica's rights, and with the intention of deceiving and misleading the public and causing harm to Geometrica. The knowing and intentional nature of the acts set forth herein renders this an exceptional case under 15 U.S.C. § 1117(a).

40. As a direct and proximate cause of Defendant's unlawful, intentional and wilful conduct, Geometrica has been and will continue to be irreparably harmed unless Defendant is temporarily, preliminarily, and/or permanently enjoined from such unlawful conduct. Geometrica has no adequate remedy at law. Unless enjoined, Defendant will continue their unlawful, intentional, and wilful conduct.

41. In light of the foregoing, Geometrica is entitled to a temporary, preliminary, and/or permanent injunction prohibiting Defendant from using the Mark, or any mark confusingly similar thereto, and to recover from Defendant all damages that Geometrica has sustained and will sustain, and all gains, profits and advantages obtained by Defendant as a result of its infringing acts alleged above in an amount not yet known, and the costs of this action pursuant to 15 U.S.C. § 1117(a) or, at Geometrica's option, statutory damages pursuant to 15 U.S.C. § 1117(c).

42. As this is an exceptional case given Defendant's wilful acts, pursuant to 15 U.S.C. § 1117(a), Geometrica is further entitled to three (3) times the amount of the above profits or damages, whichever is greater, and its reasonable and necessary attorneys' fees.

COUNT III

COMMON LAW TRADEMARK INFRINGEMENT

43. Geometrica re-alleges and incorporates herein the allegations set forth above as if fully set forth herein.

44. Geometrica is the owner of the Mark. The registration is active, valid, incontestable, and in full force and effect.

45. Defendant, without authorization from Geometrica, has used and is continuing to use the Mark.

46. Defendant's unauthorized use of the Mark has and is likely to cause confusion, mistake, or deception among consumers or potential consumers as to the origin, sponsorship, or approval of Defendant's domes and other building structures.

47. Defendant had constructive knowledge of Geometrica's registered and exclusive rights in the Mark prior to Defendant's use of the Mark, as well as actual knowledge that upon receipt of the cease and desist letters, Defendant was to cease use of the Mark immediately.

48. The aforesaid acts of Defendant constitute trademark infringement in violation of Texas common law.

49. Defendant's acts were committed wilfully, with full knowledge of Geometrica's rights, and with the intention of deceiving and misleading the public and causing harm to Geometrica.

50. As a direct and proximate cause of Defendant's unlawful, intentional and wilful conduct, Geometrica has been and will continue to be irreparably harmed unless Defendant is temporarily, preliminarily, and/or permanently enjoined from such unlawful conduct. Geometrica has no adequate remedy at law.

51. Unless enjoined, Defendant will continue their unlawful, intentional, and wilful conduct.

COUNT IV

FALSE DESIGNATION OF ORIGIN, 15 U.S.C. § 1125(A)

52. Geometrica re-alleges and incorporates herein the allegations set forth above as if fully set forth herein.

53. Geometrica is the owner of the Mark. The registration is active, valid, incontestable, and in full force and effect.

54. Defendant, without authorization from Geometrica, has used and is continuing to use the Mark.

55. Defendant's unauthorized use of the Mark constitutes false designation of origin which has and is likely to cause confusion, mistake, or deception among consumers or potential consumers as to the origin, sponsorship, or approval of Defendant's domes and other building structures.

56. Defendant had constructive knowledge of Geometrica's registered and exclusive rights in the Mark prior to Defendant's use of the Mark, as well as actual knowledge that upon receipt of the cease and desist letters, Defendant was to cease use of the Mark immediately.

57. The aforesaid acts of Defendant constitute false designation of origin in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

58. Defendant's acts were committed wilfully, with full knowledge of Geometrica's rights, and with the intention of deceiving and misleading the public and causing harm to Geometrica. The knowing and intentional nature of the acts set forth herein renders this an exceptional case under 15 U.S.C. § 1117(a).

59. As a direct and proximate cause of Defendant's unlawful, intentional and wilful conduct, Geometrica has been and will continue to be irreparably harmed unless Defendant is temporarily, preliminarily, and/or permanently enjoined from such unlawful conduct.

60. Unless enjoined, Defendant will continue their unlawful, intentional, and wilful conduct. Geometrica has no adequate remedy at law. Unless enjoined, Defendant will continue to mislead and confuse consumers as to the origin, sponsorship, or approval of Defendant's goods and/or deceive or to cause confusion or mistake among consumers as to the affiliation, connection, or association between Defendant and Geometrica.

61. In light of the foregoing, Geometrica is entitled to a temporary, preliminary, and/or permanent injunction prohibiting Defendant from using the Mark, or any mark confusingly similar thereto, and to recover from Defendant all damages that Geometrica has sustained and will sustain, and all gains, profits and advantages obtained by Defendant as a result of its infringing acts alleged above in an amount not yet known, and the costs of this action pursuant to 15 U.S.C. § 1117(a) or, at Geometrica's option, statutory damages pursuant to 15 U.S.C. § 1117(c).

62. As this is an exceptional case given Defendant's wilful acts, pursuant to 15 U.S.C. § 1117(a), Geometrica is further entitled to three times the amount of the above profits or damages, whichever is greater, and its reasonable and necessary attorneys' fees.

COUNT V

COMMON LAW UNFAIR COMPETITION

63. Geometrica re-alleges and incorporates herein the allegations set forth above as if fully set forth herein.

64. The aforesaid acts of Defendant constitute unfair competition in violation of Texas common law.

65. Defendant's acts were committed wilfully, with full knowledge of Geometrica's rights, and with the intention of deceiving and misleading the public and causing harm to Geometrica.

66. As a direct and proximate cause of Defendant's unlawful, intentional and wilful conduct, Geometrica has been and will continue to be irreparably harmed unless Defendant is temporarily, preliminarily, and/or permanently enjoined from such unlawful conduct. Geometrica has no adequate remedy at law.

67. Unless enjoined, Defendant will continue their unlawful, intentional, and wilful conduct.

COUNT VI

DILUTION, TEX. & BUS. COM. CODE §16.103

68. Geometrica re-alleges and incorporates herein the allegations set forth above as if fully set forth herein.

69. Geometrica's Mark is distinctive.

70. Geometrica has used the Mark in Texas since at least as early as 1997.

71. As a result of Geometrica's long-standing and continuous use of the Mark in Texas and its extensive advertising in Texas, the Mark is widely recognized in Texas.

72. Defendant's unlawful, intentional and wilful conduct has caused or is likely to cause dilution of Geometrica's Mark.

73. Defendant's actions demonstrate a wilful intent to cause the dilution of Geometrica's Mark.

74. Unless enjoined, Defendant will continue their unlawful, intentional, and wilful conduct causing dilution of Geometrica's Mark.

75. Geometrica is entitled to any and all remedies pursuant to §16.103 of the Texas Business and Commerce Code.

PRAYER FOR RELIEF

WHEREFORE, Geometrica hereby prays for relief as follows:

1. That this Court enter judgment that as a result of Defendant's unauthorized use of the Mark, Defendant has engaged in acts of trademark infringement in violation of Section 32(a) of the Lanham Act, false designation of origin in violation of Section 43(a) of the Lanham Act, cyberpiracy in violation of Section 43(d) of the Lanham Act, trademark infringement in violation of the common law of Texas, unfair competition in violation of the common law of Texas, and dilution of the Mark in Texas in violation of Texas law.

2. That this Court issue a temporary, preliminary, and/or permanent injunction order preventing Defendant, their agents, employees, attorneys, successors, and assigned, and all those controlled by, acting on behalf of, in privity with, or acting in concert or active participation with Defendant from:

   a. Using (including, but not limited to, in connection with http://www.us.freedomes.com/ and https://www.facebook.com/freedomes.world) the Mark, any colorable imitation thereof, or any confusingly similar mark;

b. Doing any other act that is likely to confuse, mislead or deceive others into believing that Defendant or products or services connected therewith, are connected with, sponsored by, or approved by Geometrica; and

c. Engaging in any other behavior or activity constituting unfair competition with Geometrica or constituting an infringement of Geometrica's rights in and to the Mark.

3. For compensatory damages in an amount to be proven at trial;

4. For treble damages pursuant to 15 U.S.C. § 1117;

5. Reasonable and necessary attorneys' fees;

6. For costs of suit;

7. For pre- and post-judgment interest, to the extent allowable; and

8. For such other and further relief, including injunctive, declaratory, compensatory, and any other relief as the Court may deem proper and just.

DEMAND FOR JURY TRIAL

Geometrica hereby demands a trial by jury on all claims that may be tried before a jury.

Dated: April 13, 2017

BAKER & MCKENZIE LLP

*_/s/ Bart Rankin_*

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